

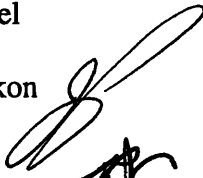






FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

September 29, 2004

MEMORANDUM

TO: Lawrence H. Norton
General Counsel

THROUGH: James A. Pehrkon 
Staff Director
Robert J. Costa 
Deputy Staff Director

FROM: Joseph F. Stoltz 
Assistant Staff Director
Audit Division
Alex Boniewicz 
Audit Manager
Marty Kuest 
Lead Auditor

SUBJECT: Volunteer PAC (A03-42) – Referral Matters

On September 21, 2004, the Commission approved the final audit report on Volunteer PAC. The final audit report includes the following matters that are referable:

- Finding 3 – Non-Federal Funding of Federal Activity meets the criteria for referral to your office. Documentation has been provided to show the non-federal account has been reimbursed \$166,047 to correct the over funding. It should also be noted that Volunteer PAC has closed its non-federal account.
- Finding 2 – Failure to Report Earmarked Contributions and Finding 4 – Inadequate Disclosure of Contributions to Federal Candidates meet the criteria for referral to ADR. However, Audit Division policy dictates if one matter is referred to your office, other matters referable to ADR shall also be referred to your office.

Based on the above, the Audit staff suggests careful consideration should be given to the extent of resources utilized by your office to pursue these matters.

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All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Marty Kuest or Alex Boniewicz at 694-1200.

Attachments: Finding 2 – Failure to Report Earmarked Contributions
Finding 3 – Non-Federal Funding of Federal Activity
Finding 4 – Inadequate Disclosure of Contributions to Federal Candidates

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Finding 2. Failure to Report Earmarked Contributions

Summary

VOLPAC collected thirteen groups of contributions totaling \$183,000 for twelve Republican Senate candidates and transferred them directly (without depositing) to these candidates. In five instances, events were held benefiting six of the candidates. Current committee representatives were not involved in this activity and were unable to provide any specific detail. VOLPAC neither reported the receipt nor the transfer of these contributions. In response to the interim audit report, VOLPAC amended its reports to disclose the earmarked contributions noted above.

Legal Standard

Earmarked Contributions. Earmarking may take the form of a designation, instruction or encumbrance and may be direct or indirect, express or implied. Anyone who receives and forwards an earmarked contribution to a candidate committee is considered a conduit or intermediary. The conduit must comply with special reporting rules, which vary depending on whether the contribution was deposited in the conduit's bank account or was passed on directly to the campaign in the form of the original contributor's check. A registered nonconnected committee acting as a conduit must disclose its activity for the reporting period in which the contribution is received. 11 CFR §110.6(b) and (c).

Disclosure on Schedule A should include:

- The name and mailing address of each person making an earmarked contribution (including earmarked contributions of \$200 or less);
- The occupation and employer of each individual making an earmarked contribution exceeding \$200;
- The candidate designated by the contributor as the recipient of the contribution;
- The election for which the contribution was designated, if any;
- The amount of the earmarked contribution; and
- The date the contribution was received by the conduit (11 CFR 110.6(b)(3)(i) and (c)(1)(iv)).

Disclosure on Schedule B should include:

- The candidate designated by the contributor;
- The date the contribution was forwarded;
- The amount forwarded to the candidate;
- The election designated by the contributor, if any;
- The name of the contributor;
- An indication that the contribution was passed on in the form of the contributor's original check, if appropriate; and
- A statement indicating that the conduit's limit was also affected, if appropriate. (11 CFR 110.1(b)(3)(i), (c)(1)(iv) and (d)(2)).

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Facts and Analysis

Copies of thirteen groups of contribution checks for twelve U.S. Senate candidates were located in VOLPAC's records. VOLPAC apparently collected contributions from individuals and political committees earmarked for these specific candidates. In five instances, VOLPAC held small events to facilitate the receipt of these contributions and allow the candidates to meet with the contributors. The earmarked contributions, totaling \$183,000, were passed directly to the designated campaigns; the contributions were not deposited to VOLPAC's account.

VOLPAC, functioning as a conduit, is required to disclose this activity on its disclosure reports and, therefore, should have reported the receipt and transfer of these contributions.¹ The contribution checks in each group have a range of dates which suggests that VOLPAC collected the contributions and then passed them on to the candidates. Because VOLPAC forwarded each contribution without depositing it first (i.e., in the form of the contributor's original check), it must disclose the information detailed above as memo entries on Schedules A (Itemized Receipts) and B (Itemized Disbursements).

The Audit staff presented this matter at the exit conference and provided VOLPAC's representative with schedules detailing the earmarked contributions requiring disclosure. The representative expressed a willingness to file amended reports.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that, within 30 calendar days of service of the interim audit report, VOLPAC either provide conclusive evidence that would show that it had not functioned as a conduit in the collection and forwarding of these contributions, or alternatively, file amended reports to disclose the earmarked contributions as memo entries on Schedules A and the transfer of those contributions to the intended recipients on Schedules B.

In response to the interim audit report, VOLPAC filed amended disclosure reports on which it included memo entries on Schedules A and B for the earmarked contributions identified in the audit.

Finding 3. Non-Federal Funding of Federal Activity

Summary

A review of expenditures by the federal and non-federal accounts indicated that the non-federal account had over funded its share of allocable expenses by \$166,047. Contributing significantly to this result was the allocation ratio used by VOLPAC which allocated such expenses 71% to the non-federal account, when it should have only been 15%. In response to the interim audit report, VOLPAC stated on its amended report that it had reimbursed its non-federal account \$166,047 to correct the over funding by the

¹ VOLPAC disclosed earmarked contributions on its Mid Year 2003 report. The contributions disclosed as earmarked resemble the contributions identified above in the 2002 cycle.

non-federal account identified in the audit. Additionally, VOLPAC itemized its allocable activity in memo entries on Schedules H4 to correct the disclosure of expenditures.

Legal Standard

Accounts for Federal and Non-Federal Activity. A committee that finances political activity in connection with both federal and non-federal elections must establish two accounts (federal and non-federal) and allocate shared expenses--those that simultaneously support federal and non-federal election activity—between the two accounts. Alternatively, the committee may conduct both federal and non-federal activity from one bank account, considered a federal account. 11 CFR §102.5(a)(1)(i).

Federal vs. Non-Federal Account. The federal account may contain only those funds that are permissible under the federal election law; the non-federal account may contain funds that are not permitted under the federal law (but are legal under state law), such as contributions that exceed the limits of the federal law and contributions from prohibited sources, such as corporations and labor organizations. 11 CFR §102.5(a)(1)(i) and (a)(3).

Reporting Allocable Expenses. A political committee that allocates federal/non-federal expenses must report each disbursement it makes from its federal account (or separate allocation account) to pay for a shared federal/non-federal expense. Committees report these kinds of disbursements on Schedule H4. 11 CFR §104.10(b)(4)

Allocation Required for Generic Voter Drives. Nonconnected committees must allocate all of their costs for generic voter drives. A generic voter drive is an activity that urges the general public:

- To register to vote;
- To vote; or
- To support candidates of a particular party or candidates who are associated with a particular issue, without mentioning a specific candidate. 11 CFR §106.6(b)(2)(iii).

Determining the appropriate allocation ratio. Nonconnected committees shall allocate administrative expenses and costs of generic voter drives based on the ratio of federal expenditures to total federal and non-federal expenditures. The federal and non-federal expenditures used in this calculation are limited to expenditures made in direct support of candidates. 11 CFR §106.6(c)(1)

Facts and Analysis

VOLPAC neither paid all allocable expenses from the federal account or an allocation account, nor used the correct allocation ratio. Rather, using a ratio of 29% federal and 71% non-federal, VOLPAC calculated the respective shares of allocable expenses and paid each portion separately from the federal and non-federal accounts. VOLPAC has indicated its ratio was based on the ratio used by The Republican Party of Tennessee; however, it did not disclose this ratio on Schedule H1(Allocation Ratios), as required.

The Audit staff reviewed direct candidate support by VOLPAC in order to determine the correct allocation ratio for administrative and generic get out the vote expenses. VOLPAC contributed a total of \$344,500 directly to candidates; \$53,000 to state (non-federal) candidates and \$291,500 to federal candidates. Based on this information, the

Audit staff calculated the allocation ratio to be 85% federal (\$251,500/\$344,500) and 15% non-federal (\$53,000/\$344,500).

The Audit staff reviewed expenditures made by VOLPAC's federal and non-federal accounts and determined the following:

- VOLPAC funded a statewide generic get-out-the-vote media campaign in Tennessee during the last two weeks of October, 2002. These expenses were paid separately from the Committee's federal and non-federal accounts. The total cost of the program was \$198,974. The first four invoices from the media vendor were allocated and paid 29% or \$57,475 federal and 71% or \$140,715 non-federal. A payment for the final invoice, in the amount of \$784, was paid entirely from the federal account.
- Two payments totaling \$95,100 were made entirely from the non-federal account, one in the amount of \$15,000 for VOLPAC's website development and a consulting fee of \$80,100. Both expenditures were administrative in nature which should also have been paid on an allocated basis.
- Additional administrative expenses were identified, totaling \$161,087 that were paid entirely by the federal account. Of this amount, 15%, or \$24,163, could have been funded by the non-federal account.
- VOLPAC received offsets of \$16,385 relative to the media program. Of this amount, it deposited \$12,433 into the federal account and \$3,952 into the non-federal account. Since VOLPAC would have been permitted to deposit these 85% federal and 15% non-federal, it should have deposited only \$2,458 to the non-federal account. This resulted in an "overfunding" by the non-federal of \$1,494 (\$3,952 - \$2,458).

Based on the above, the following chart summarizes and calculates the extent of the non-federal funding of federal activity.

Description	Non-federal Share as paid by VOLPAC	Non-federal Share per Audit Staff at 15%	Amount Over Funded by Non-federal
Statewide GOTV	\$140,715	\$29,846	\$110,869
Consulting & Website costs paid 100% by Non federal	\$95,100	\$14,265	\$80,835
Administrative costs paid 100% by Federal	\$0	\$24,163	(\$24,163)
Refunds of Allocable Expenses	(\$3,952)	(\$2,458)	(\$1,494)
Total Over Funding:			\$166,047

The Audit staff's analysis indicates that the non-federal account has over funded its share of allocable expenses by \$166,047.

The Audit staff presented this matter at the exit conference and provided VOLPAC's representative with schedules detailing the expenditures. The representative expressed a

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willingness to file amended reports and understood a payment from the federal to the non-federal was necessary.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that, within 30 calendar days of service of the interim audit report, VOLPAC demonstrate that the identified disbursements are not allocable expenses; the Audit staff's ratio calculation is incorrect; and/or there has been no over funding by the non-federal account. Absent such a demonstration, it is recommended that VOLPAC:

- File a Schedule H1 to correctly disclose the administrative/gotv allocation ratio;
- File Schedules H4 (Joint Federal/Non-Federal Activity Schedule) disclosing the payments noted above (as memo entries), including the total amount paid, the federal share, and the non-federal share;²
- Footnote each memo entry on Schedules H4 to say "recognize payments of allocable expenses from the non-federal account; and
- Using funds from its federal account, reimburse the non-federal account \$166,067 and provide evidence of such reimbursement. If VOLPAC lacks the funds to make the reimbursement, it should disclose the amount owed as a debt on Schedule D (Debts and Obligations) until such time as funds become available to make the reimbursement.

In response to the interim audit report, VOLPAC acknowledged the over funding of federal expenses by the non-federal account, provided evidence of the reimbursement of the non-federal account and filed amended disclosure reports. On the amended reports, VOLPAC stated on its amended report that it had reimbursed its non-federal account \$166,067 to correct the over funding by the non-federal account and would report this transfer in the current period. Also included on the amended report was a Schedule H1 indicating an administrative allocation ratio of 85% federal and 15% non-federal and memo entries of expenses on Schedules H4 to correctly disclose allocable expenditures.

Finding 4. Inadequate Disclosure of Contributions to Federal Candidates

Summary

VOLPAC did not adequately disclose seventy-four contributions (\$281,000) to federal candidates and other political committees. For the vast majority of these items VOLPAC failed to disclose the office sought, and where appropriate, congressional district. In response to the interim audit report, VOLPAC amended its reports to include the missing information noted above.

² The original entries on Schedules B must remain since the Schedule H4 entries must be entirely memo entries. Electronically filed Schedules H4 may not contain entries that are partially memo and partially non-memo.

Legal Standard

Reporting Contributions to Federal Candidates or Committees. When making contributions to federal candidates, the committee must report the:

- Amount;
- Date when the contribution was made;
- Candidate name and address;
- Office sought, (including state and Congressional district if applicable); and
- election designation.² U.S.C. §434(b)(5)(A) and 11 CFR §104.3(b)(3)(v).

Facts and Analysis

In a review of all contributions to federal candidates and other political committees itemized by VOLPAC, the Audit staff identified seventy-four disbursements, totaling \$281,000 (62% of such disbursements) that were not adequately disclosed.

VOLPAC failed to disclose the state, office sought, and where appropriate, congressional district for seventy-three of the contributions. Included among these were seventeen that included apparently incorrect election designations to the 1998 primary or general. There were two items which failed to include complete addresses.³ The information missing from the reports for these items was not found in VOLPAC's records.

At the exit conference, VOLPAC representatives indicated their willingness to file amended reports to correct this deficiency.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that, within 30 calendar days of service of the interim audit report, VOLPAC amend its reports to correctly disclose the contributions to federal candidates noted above.

In response to the interim audit report, VOLPAC filed amended reports which corrected the identified disclosure omissions.

³ One of these items was also among the seventy-three items previously mentioned.